DG 05-141

**ENERGYNORTH NATURAL GAS, INC. D/B/A
KEYSPAN ENERGY DELIVERY NEW ENGLAND**

2005/2006 Winter Cost of Gas

**Order Approving the Cost of Gas Rates, Local Distribution
Adjustment Clause Rates and Other Rates**

O R D E R N O. 24,535

October 28, 2005

APPEARANCES: McLane, Graf, Raulerson, and Middleton by Steven V. Camerino, Esq. on behalf of EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Office of the Consumer Advocate by Rorie E.P. Hollenberg, Esq. on behalf of residential utility consumers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission

I. PROCEDURAL HISTORY

On September 1, 2005, EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England (KeySpan), a public utility engaged in the business of distributing natural gas in 29 cities and towns in southern and central New Hampshire and the City of Berlin in northern New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) its Cost of Gas (COG) for the 2005/2006 winter period. KeySpan's filing included the direct testimony and supporting attachments of Ann E. Leary, Manager of Rates and Regulatory Affairs, Theodore E. Poe, Jr., Energy Planning Manager, and Alexander G. Taft, Director of Environmental Operations New England. Accompanying KeySpan's COG filing was a Motion for Protective Order and Confidential Treatment.

On September 23, 2005, KeySpan filed revised COG rates for the 2005/2006 winter period, in accordance with Commission Order No. 24,515 in Docket No. DG 05-127 (September 16, 2005) which approved setting the 2005/2006 Winter Fixed Price Option (FPO) rates $0.02 per therm above the updated COG rates. On September 27, 2005, KeySpan filed a second Motion for Protective Order and Confidential Treatment of a Cost Sharing Agreement between KeySpan and TransCanada Pipelines Limited (TransCanada) and certain related explanatory testimony. Also on September 27, 2005, the Commission issued an Order of Notice setting a technical session for October 3, 2005, and a hearing for October 18, 2005.

On October 14, 2005, KeySpan filed further revised COG rates for the 2005/2006 winter period and a third Motion for Protective Order and Confidential Treatment of Responses to Staff Data Requests 1-3, 4, 6, 13, 17 and 18. Also on October 14, 2005, the Commission issued Order No. 24,529 in Docket No. DG 05-127 approving further revisions to the 2005/2006 winter FPO rates, setting them $0.02 per therm above the revised COG rates. On October 18, 2005, a duly noticed hearing on the merits was held at the Commission.

II. POSITIONS OF THE PARTIES AND STAFF

A. KeySpan

KeySpan witnesses Ann E. Leary and Theodore E. Poe testified to: 1) calculation of the firm sales COG rates and impacts on customer bills; 2) supply reliability and price stability; 3) the firm transportation COG rate; 4) the transportation supplier balancing charge, peaking service demand charge and capacity allocators; and 5) the local distribution adjustment clause (LDAC) charge.

KeySpan witness Alexander G. Taft also provided pre-filed testimony regarding the status of site investigation and remediation efforts at the various manufactured gas plant (MGP) sites in New Hampshire and KeySpan's efforts to seek reimbursement for MGP related liabilities from third parties in order to diminish the costs submitted for recovery from KeySpan's customers. The costs associated with these efforts and the amounts recovered from third parties are detailed in testimony and supporting schedules and other data supplied to the Staff by Ms. Leary. Tricia Hederle, Lead Project Manager/Hydrogeologist for KeySpan Energy Delivery New England testified at the hearing in place of Mr. Taft, who was unable to attend due to other commitments.

1. Calculation and Impact of the Firm Sales COG Rates

The proposed 2005/2006 winter COG average residential firm sales COG rate of $1.2751 per therm is comprised of anticipated direct gas costs, indirect gas costs and various adjustments. Unadjusted anticipated direct gas costs total $116,707,072 and adjustments total $4,172,546. Anticipated indirect gas costs total $4,880,716, consisting of working capital, bad debt and overhead charges. The gas costs to be recovered over the 2005/2006 winter period (anticipated direct and indirect costs and adjustments) total $125,760,333 and are divided by projected winter period sales of 98,630,493 therms (based on 2004/2005 winter normalized sales and projected sales growth of 2 percent) to arrive at the average COG rate.

The applicable ratios established in KeySpan's rate redesign case, *EnergyNorth Natural Gas, Inc., dba KeySpan Energy Delivery New England*, 86 NH PUC 248 (2001), were applied to the average residential COG rate to determine the commercial and industrial (C&I) low winter use COG rate of $1.1358 per therm and the C&I high winter use COG rate of $1.2992 per therm. KeySpan testified that the primary reason for the increased COG rates are that the purchased gas supply costs are higher than last winter and projected commodity prices quoted on the New York Mercantile Exchange (NYMEX) are substantially higher than prices paid last winter.

KeySpan's proposed 2005/2006 winter COG residential rate of $1.2751 per therm is an increase of $0.3326 per therm from the 2004/2005 winter weighted firm sales COG rate of

$0.9425 per therm. The combined impact of the proposed firm sales COG rate and LDAC rate is a $318, or 27 percent, increase in the typical residential heating customer's winter gas costs, compared to last winter.

2. Supply Reliability and Price Stability

KeySpan testified that it holds a diverse gas supply portfolio, with winter supplies coming in roughly equal volumes from three distinct supply sources – Canada, the Gulf of Mexico and underground natural gas stored primarily in Pennsylvania and New York. In addition to those supplies, KeySpan has secured liquified natural gas (LNG) and propane for use in its peaking facilities, as well as peaking contracts with Distrigas of Massachusetts, LLC and AES Londonderry, LLC for additional supplies to be delivered directly to KeySpan's city gates. And while there are some concerns regarding the shut in natural gas supplies in the Gulf of Mexico, KeySpan has been in contact with its gas suppliers and asset manager and expects full delivery of those supplies.

KeySpan testified that along with pre-purchased supplies in storage, under its hedging plan a substantial volume of index-priced supplies have been hedged for this winter, effectively locking in prices for approximately 63% of its winter supply. As a result of KeySpan's diverse supply portfolio and hedging, only 37% of its forecasted winter supply is subject to the extremely volatile natural gas commodity market, thereby ensuring a greater level of price stability than would otherwise be the case. KeySpan also noted that anticipated savings from the hedging plan are approximately $23.4 million for the 2005/2006 winter period.

KeySpan will also use "rule curves" to govern the dispatch of underground natural gas storage, whereby KeySpan maintains a specific level of natural gas storage at the end of each month. The "rule curves" prevent excessive storage withdrawals early in the winter without re-injecting gas during those months, thereby reducing the need for spot purchases later in the winter.

3. Firm Transportation COG Rate

The proposed firm transportation COG rate of $0.0030 per therm is a decrease of $0.0012 from last winter's rate of $0.0042 per therm. This decrease is largely the result of an $18,987 over recovery from last winter.

4. Revised Transportation Charges and Allocators

In *Re Gas Restructuring-Unbundling and Competition in the Natural Gas Industry*, 86 NH PUC 131 (2001), the Commission approved a supplier balancing charge and peaking service demand charge to be updated once a year, commencing with the November billing month. Supplier balancing charges are the charges that suppliers are required to pay as KeySpan attempts to meet the shifting loads for the supplier's customer pools. Peaking service demand charges reflect KeySpan's peaking resources and associated costs. KeySpan proposes to increase the supplier balancing charge from $0.15 per MMBtu to $0.16 per MMBtu of daily imbalance volumes and decrease the peaking service demand charge from $18.28 per MMBtu of peak MDQ to $18.17 per MMBtu of peak MDQ. The changes are based on an update of volumes and costs used in calculating the charges. Finally, the capacity allocator percentages, which are used to allocate pipeline, storage and local peaking capacity to a customer's supplier under the mandatory capacity assignment required by New Hampshire for firm transportation service, have been updated to reflect KeySpan's supply portfolio for the upcoming year.

5. LDAC Rates

The LDAC charges that KeySpan proposes to bill from November 1, 2005, through October 31, 2006, include charges for DSM lost revenues, energy efficiency programs, certain environmental remediation costs for the clean up of MGP sites in New Hampshire and lost revenues and program costs associated with the Residential Low Income Assistance Program.

KeySpan proposes a $0.0004 per therm conservation charge (CC) for residential heating customers to recover lost revenues that resulted from discontinued DSM programs. KeySpan proposes a $0.0000 per therm CC for its non-heating residential and C&I customers.

In *EnergyNorth Natural Gas, Inc*., 84 NH PUC 489 (1999), the Commission approved a recovery mechanism for environmental remediation costs, including legal costs incurred pursuing third party recoveries (i.e., plant operators and insurance carriers), associated with former MGP sites. These costs are filed during KeySpan's winter COG proceeding for Commission review and are recovered over a seven-year period. Third party recoveries are credited against unamortized balances authorized for recovery and used to reduce the amortization period. Additional environmental remediation costs of $1,859,825 have been incurred over the past year and proposed for recovery. The proposed environmental surcharge for the upcoming year is $0.0123 per therm. The net impact on the total environmental surcharge is an increase of $0.0024 per therm from the current surcharge of $0.0099 per therm.

In *Energy-Efficiency Programs for Gas Utilities*, 87 NH PUC 892 (2002), the Commission approved the implementation of energy efficiency programs for New Hampshire's natural gas utilities. The LDAC charge includes a proposed energy efficiency surcharge of $0.0079 per therm for residential non heating customers, $0.0084 per therm for residential heating customers and $0.0137 per therm for C&I customers, effective November 1, 2005 through October 31, 2006. The proposed energy efficiency surcharge represents a decrease of $0.0015 per therm for residential non heating customers, $0.0014 per therm for residential customers and an increase of $0.0048 per therm for C&I customers compared to energy efficiency rates currently in effect.

In *New Hampshire Natural Gas Utilities*, Order No. 24,508 (September 1, 2005), the Commission approved implementation of a pilot Residential Low Income Assistance Program for New Hampshire's natural gas utilities. The LDAC charge includes a proposed low income surcharge of $0.0074 per therm for all firm sales and transportation customers, effective November 1, 2005 through October 31, 2006. The charge is designed to recover $1,118,787, of which $100,000 is for the estimated administrative and programming costs associated with the start up of the program and the remainder is for the projected revenue shortfall resulting from the discounted rate for qualifying customers.

6. Motions for Protective Order and Confidential Treatment

KeySpan requests that the Commission issue protective orders regarding certain confidential information provided to the Commission.

First, in the Motion for Protective Order and Confidential Treatment filed on September 1, 2005, KeySpan seeks protective treatment for the following information which, according to KeySpan, identifies specific suppliers and commodity and demand charges or such information can be determined from the data provided: Schedule 1, Summary of Supply and Demand Forecast; Schedule 2, Contracts Ranked on a per Unit Cost Basis; Schedule 4, Summary of Adjustments to Gas Costs; Schedule 5A, Demand Costs; Schedule 5C, Demand Rates; Schedule 6, Supply and Commodity Costs, Volumes and Rates; Schedule 7, NYMEX Futures @ Henry Hub and Hedged Contracts; Schedule 16, Storage Inventory, Underground, LPG and LNG including Calculation of Money Pool Interest Costs Associated with Natural Gas; and Tariff Page 153, Attachment B in worksheets showing peaking demand rate calculation. In its

September 23, 2005 revised filing, KeySpan stated that the confidential schedules provided were understood to be covered by this motion.

KeySpan asserts that this information constitutes trade secrets of KeySpan and should be protected as confidential commercial information. KeySpan states that it does not disclose this information to anyone outside of its corporate affiliates and their representatives. KeySpan further asserts that release of this information is likely to result in competitive disadvantage for KeySpan in the form of less advantageous or more expensive gas supply contracts and that gas suppliers possessing the confidential information described above would be aware of KeySpan's expectations regarding gas supply costs and other contract terms, and would therefore be unlikely to propose to supply such goods and services on terms significantly more advantageous to KeySpan.

Second, in the Motion for Protective Order and Confidential Treatment Regarding Terms of a Cost Sharing Agreement, filed with the Commission on September 27, 2005, KeySpan seeks protective treatment regarding a contract entitled “Shared Cost Event of Cancellation Agreement” dated February 11, 2005, between KeySpan and TransCanada, as well as related testimony of John E. Allocca previously filed in a proceeding before the Massachusetts Department of Telecommunications and Energy. The Agreement, which contains confidential information related to the allocation of costs between TransCanada and KeySpan, requires that the Agreement (and even its existence) be kept confidential although TransCanada subsequently agreed to more limited protection in order to accommodate KeySpan’s need to provide the agreement to its regulators. The related testimony includes a summary of the terms, including the confidential terms, of the Cost Sharing Agreement. In addition, KeySpan states that public disclosure of the information would undermine its efforts to negotiate and effectuate transportation agreements with other pipelines on terms that are favorable to KeySpan, possibly resulting in increased costs for which customers would ultimately bear the burden.

Third, in the Motion for Protective Order and Confidential Treatment Regarding Responses to Staff Data Requests, filed with the Commission on October 14, 2005, KeySpan seeks protective treatment of responses to Staff Data Requests 1-3, 1-4, 1-6, 1-13, 1-17 and 1-18, all of which are said to contain pricing information that KeySpan normally maintains in confidence. KeySpan submits that the pricing information included in the responses constitutes trade secrets of KeySpan and should be protected as confidential commercial information. KeySpan avers that it does not disclose this information to anyone outside of its corporate affiliates and their representatives, and that release of the information will likely result in a competitive disadvantage for KeySpan.

B. OCA

The OCA expressed its concern about the rising costs of natural gas. However, the OCA recognized that local distribution companies such as KeySpan have little or no control over the circumstances contributing to these rising costs and high prices are the reality all over the country and indeed the world. The OCA stated that KeySpan's COG is reflective of this reality and is just and reasonable in light of the present circumstances. Therefore, the OCA supports Keyspan's request for approval of its winter COG.

C. Staff

Staff recommends approval of the proposed KeySpan COG rates, LDAC rates, Supplier Balancing Charge and other rates. According to Staff, KeySpan's demand and supply plans are consistent with those filed by KeySpan in previous winter periods and have been accepted by the Commission in the past. Staff also noted that there will be a reconciliation of forecast and actual gas costs for the period that will be filed prior to next winter's COG proceeding and any concerns that may arise related to the 2005/2006 gas planning and dispatch may be raised and addressed in the 2006/2007 winter COG.

Staff stated that Commission auditors had not yet had a chance to review invoices related to environmental costs and recoveries. Staff expressed its desire to have the opportunity to review the audit results and additional information, as deemed necessary and appropriate, which KeySpan has offered to provide in support of cost recovery.

III. COMMISSION ANALYSIS

A. Confidentiality

The New Hampshire Right to Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exemption, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. Our applicable rule, Puc 204.06, is designed to facilitate the implementation of the statute as it as been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See e.g., Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

We note that no parties have objected to the three motions for protective order and confidential treatment and that the information for which protective treatment is sought is similar to information for which the Commission has granted protective treatment in the past. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of KeySpan and ultimately its ratepayers in non-disclosure outweigh the public's interest in obtaining access to the information. We will therefore grant the three motions for protective order and confidential treatment at this time. KeySpan did not file separate motions for protective order and confidential treatment in connection with its two revisions to the initial COG filing nor did its Motion for Protective Order and Confidential Treatment filed on September 1, 2005, specifically state that it was intended to cover the same type of information filed in subsequent COG revisions. However, for the sake of administrative efficiency in this docket, we will treat such Motion as covering the revised confidential schedules in the two subsequent COG filings, consistent with KeySpan's statement in its September 23, 2005 COG filing. Consistent with our practice, the protective treatment provisions of this Order will be subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

B. Cost of Gas Rates

Based on a review of the record in this docket, we find that KeySpan's proposed COG rates and surcharges will result in just and reasonable rates pursuant to RSA 378:7. Accordingly, we approve KeySpan's proposed 2005/2006 firm sales winter COG rates, firm transportation winter COG rate, LDAC rate components (including conservation charges, environmental cost recovery surcharge, energy efficiency surcharges and residential low income assistance program surcharge), transportation supplier balancing rate, transportation peaking service demand rate and transportation capacity allocators.

We will grant Staff's request to obtain further information in support of the unaudited environmental costs, in response to KeySpan's offer to provide such documentation if so requested. That does not preclude us from approving the proposed surcharge to recover those costs commencing November 1, 2005, subject to reconciliation, as any issues related to those costs can be raised and addressed in the 2006/2007 winter COG. That pool of costs is to be recovered over a seven year period and carrying costs will be applied to any adjustments, meaning both KeySpan and its customers will not be harmed if those costs are revised in next winter's COG proceeding.

We note that the rates are significantly higher than in past winters, reflective of existing conditions in the energy market. There is extreme volatility in the energy market at present, due to a number of issues, including the impacts of Hurricanes Katrina and Rita on natural gas production. Natural gas is an unregulated commodity and as its price increases in response to market conditions, it is inevitable that New Hampshire's natural gas customers will see a similar increase in their rates. At the same time, however, it is important to point out that the cost of gas mechanism is structured in a way that prevents the utility from realizing increased profits when the cost of gas increases. Finally, we note that KeySpan's diverse portfolio and hedging plans help sustain reliability and cushion the impact of the recent run up in gas prices, without which this winter's projected gas costs would have been approximately 20% higher, according to figures provided by KeySpan.

Based upon the foregoing, it is hereby

ORDERED, that KeySpan's 2005/2006 winter COG per therm rates for the period November 1, 2005 through April 30, 2006 are APPROVED, effective for service rendered on or after November 1, 2005 as follows:

	Cost of Gas	Minimum COG	Maximum COG
Residential	$1.2751	$1.0201	$1.5301
C&I, low winter use	$1.1358	$0.9086	$1.3630
C&I, high winter use	$1.2992	$1.0394	$1.5590

FURTHER ORDERED, that KeySpan may, without further Commission action, adjust the COG rates upward or downward monthly based on KeySpan's calculation of the projected over or under collection for the period, but the cumulative adjustments shall not exceed twenty percent (20%) of the approved unit COG, *i*.e., the minimum and maximum rates as set above; and it is

FURTHER ORDERED, that KeySpan shall provide the Commission with its monthly calculation of the projected over or under calculation, along with the resulting revised COG rates for the subsequent month, not less than five (5) business days prior to the first day of the subsequent month. KeySpan shall include a revised tariff page 84 - Calculation of Firm Sales Cost of Gas Rate and revised rate schedules if KeySpan elects to adjust the COG rates; and it is

FURTHER ORDERED, that the over or under collection shall accrue interest at the Prime Rate reported in the *Wall Street Journal*, to be adjusted each quarter using the rate reported on the first date of the month preceding the first month of the quarter; and it is

FURTHER ORDERED, that KeySpan's proposed 2005/2006 local distribution adjustment clause per therm rates for the period November 1, 2005 through October 31, 2006, are APPROVED effective for service rendered on or after November 1, 2005 as follows:

	Demand Side Management	**Environmental Remediation**	**Energy Efficiency**	**Residential Low Income**	**LDAC**
Residential Heating	$0.0005	$0.0123	$0.0079	$0.0074	0.0281
Residential Non-heating	$0.0000	$0.0123	$0.0079	$0.0074	0.0276
Commercial & Industrial	$0.0001	$0.0123	$0.0136	$0.0074	0.0334

FURTHER ORDERED, that KeySpan's proposed firm transportation winter COG rate of $0.0030 per therm for the period November 1, 2005 through April 30, 2006, is APPROVED; and it is

FURTHER ORDERED, that KeySpan's proposed transportation supplier balancing charge of $0.16 per MMBtu of daily imbalance volumes, is APPROVED; and it is

FURTHER ORDERED, that KeySpan's proposed transportation peaking service demand charge of $18.17 per MMBtu of peak MDQ, is APPROVED; and it is

FURTHER ORDERED, that KeySpan's proposed transportation capacity allocators as filed in Proposed Fifth Revised Page 155, Superseding Fourth Revised Page 155, are APPROVED; and it is

FURTHER ORDERED, that KeySpan shall file properly annotated tariff pages in compliance with this Order no later than 15 days from the issuance date of this Order, as required by N.H. Admin. Rules, Puc 1603; and it is

FURTHER ORDERED, that KeySpan's three motions for protective order and confidential treatment are GRANTED, provided that the protective treatment provisions of this Order will be subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 2005.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Michael D. Harrington Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary